

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 369

SENATE BILL 1376

AN ACT

AMENDING SECTION 12-116, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2004, CHAPTER 69, SECTION 2; AMENDING SECTION 12-116, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2004, CHAPTER 69, SECTION 3; AMENDING SECTIONS 12-117, 13-4041 AND 13-4234, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3011.11; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 41; AMENDING LAWS 2000, CHAPTER 193, SECTION 598, AS AMENDED BY LAWS 2001, CHAPTER 8, SECTION 2, LAWS 2002, CHAPTER 291, SECTION 17 AND LAWS 2004, CHAPTER 69, SECTION 5; AMENDING LAWS 2000, CHAPTER 193, SECTION 599, AS AMENDED BY LAWS 2001, CHAPTER 8, SECTION 3, LAWS 2002, CHAPTER 291, SECTION 18 AND LAWS 2004, CHAPTER 69, SECTION 6; MAKING AN APPROPRIATION; RELATING TO CAPITAL CASES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-116, Arizona Revised Statutes, as amended by
3 Laws 2004, chapter 69, section 2, is amended to read:

4 12-116. Time payment fee

5 A. In addition to any other assessment authorized by law, a fee of
6 twenty dollars shall be assessed on each person who pays a court ordered
7 penalty, fine or sanction on a time payment basis, including parking
8 penalties, restitution and juvenile monetary assessments. A time payment
9 basis shall be any penalty, fine or sanction not paid in full on the date the
10 court imposed the fine, penalty or sanction. Notwithstanding any other law,
11 the time payment fee shall be collected first after restitution. A judge may
12 not waive or suspend a time payment fee.

13 B. Eleven dollars of the time payment fee shall be deposited, pursuant
14 to sections 35-146 and 35-147, in the judicial collection enhancement fund
15 established by section 12-113. Two dollars of the time payment fee shall be
16 deposited, pursuant to sections 35-146 and 35-147, in the judicial collection
17 enhancement fund and shall be allocated by the supreme court to the county
18 public defender training fund established by section 12-117. Seven dollars
19 of the time payment fee shall be kept by the court imposing the fee to be
20 used by the court to improve, maintain and enhance the ability to collect and
21 manage monies assessed or received by the courts, to improve court automation
22 and to improve case processing or the administration of justice. For amounts
23 over an amount determined by the supreme court, the court shall submit a plan
24 to the supreme court which THAT must be approved by the supreme court prior
25 to BEFORE the court ~~expending~~ SPENDS such monies. If the proposed project
26 was described in the information technology strategic plan submitted by the
27 court and approved by the supreme court, including the proposed budget for
28 the project, the project may proceed without further approval of the supreme
29 court. In the case of the superior court, the presiding judge and clerk of
30 the superior court must agree on the project or it shall be submitted to and
31 approved by the supreme court.

32 Sec. 2. Section 12-116, Arizona Revised Statutes, as amended by Laws
33 2004, chapter 69, section 3, is amended to read:

34 12-116. Time payment fee

35 A. In addition to any other assessment authorized by law, a fee of
36 twelve dollars shall be assessed on each person who pays a court ordered
37 penalty, fine or sanction on a time payment basis, including parking
38 penalties, restitution and juvenile monetary assessments. A time payment
39 basis shall be any penalty, fine or sanction not paid in full on the date the
40 court imposed the fine, penalty or sanction. Notwithstanding any other law,
41 the time payment fee shall be collected first after restitution. A judge may
42 not waive or suspend a time payment fee.

43 B. Seven dollars of the time payment fee shall be deposited, pursuant
44 to sections 35-146 and 35-147, in the judicial collection enhancement fund
45 established by section 12-113. Two dollars of the time payment fee shall be

1 deposited, pursuant to sections 35-146 and 35-147, in the judicial collection
2 enhancement fund and shall be allocated by the supreme court to the county
3 public defender training fund established by section 12-117. Three dollars
4 of the time payment fee shall be kept by the court imposing the fee to be
5 used by the court to improve, maintain and enhance the ability to collect and
6 manage monies assessed or received by the courts, to improve court automation
7 and to improve case processing or the administration of justice. For amounts
8 over an amount determined by the supreme court, the court shall submit a plan
9 to the supreme court which THAT must be approved by the supreme court prior
10 to BEFORE the court expending SPENDS such monies. If the proposed project
11 was described in the information technology strategic plan submitted by the
12 court and approved by the supreme court, including the proposed budget for
13 the project, the project may proceed without further approval of the supreme
14 court. In the case of the superior court, the presiding judge and clerk of
15 the superior court must agree on the project or it shall be submitted to and
16 approved by the supreme court.

17 Sec. 3. Section 12-117, Arizona Revised Statutes, is amended to read:
18 12-117. Public defender training fund; appropriation

19 A. The county public defender training fund is established consisting
20 of monies allocated to the fund pursuant to section 12-116. The supreme
21 court shall administer the fund.

22 B. Each month the supreme court shall deposit in the fund the monies
23 collected for the fund. All monies deposited in the fund are continuously
24 appropriated to the supreme court for distribution to each county public
25 defender AND THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE as
26 provided in subsection C of this section.

27 C. The allocation of monies collected shall be made to each county
28 public defender office AND THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER
29 OFFICE in proportion to the number of felony cases assigned to that office in
30 the last fiscal year.

31 D. Monies received shall be used exclusively for the purpose of county
32 public defender training. Each county public defender office receiving
33 training fund monies shall submit to the supreme court an annual report of
34 all financial receipts and expenditures from the training fund.

35 Sec. 4. Section 13-4041, Arizona Revised Statutes, is amended to read:

36 13-4041. Fee of counsel assigned in criminal proceeding or
37 insanity hearing on appeal or in postconviction
38 relief proceedings; reimbursement; definitions

39 A. Except pursuant to subsection G of this section, if counsel is
40 appointed by the court to represent the defendant in either a criminal
41 proceeding or insanity hearing on appeal, the county in which the court from
42 which the appeal is taken presides shall pay counsel, except that in those
43 appeals where the defendant is represented by a public defender or other
44 publicly funded office, compensation shall not be set or paid. Compensation

1 for services rendered on appeal shall be in an amount as the supreme court in
2 its discretion deems reasonable, considering the services performed.

3 B. After the supreme court has affirmed a defendant's conviction and
4 sentence in a capital case, the supreme court, or if authorized by the
5 supreme court, the presiding judge of the county from which the case
6 originated shall appoint counsel to represent the capital defendant in the
7 state ~~post-conviction~~ POSTCONVICTION relief proceeding. ~~Counsel shall meet~~
8 ~~the following qualifications:~~ THE COURT SHALL APPOINT COUNSEL FROM THE STATE
9 CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE UNLESS A CONFLICT EXISTS OR THE
10 COURT MAKES A FINDING THAT THE OFFICE CANNOT REPRESENT THE DEFENDANT.

11 ~~1. Membership in good standing of the state bar of Arizona for at~~
12 ~~least five years immediately preceding the appointment.~~

13 ~~2. Practice in the area of state criminal appeals or post-conviction~~
14 ~~proceedings for at least three years immediately preceding the appointment.~~

15 ~~3. No previous representation of the capital defendant in the case~~
16 ~~either in the trial court or in the direct appeal, unless the defendant and~~
17 ~~counsel expressly request continued representation and waive all potential~~
18 ~~issues that are foreclosed by continued representation.~~

19 C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, the supreme court
20 shall establish and maintain a list of PERSONS WHO ARE qualified ~~candidates.~~
21 ~~In addition to the qualifications prescribed in subsection B of this section,~~
22 TO REPRESENT CAPITAL DEFENDANTS IN THOSE CASES IN WHICH THE COURT DOES NOT
23 APPOINT COUNSEL FROM THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE.
24 The supreme court may establish by rule more stringent standards of
25 competency for the appointment of ~~post-conviction~~ POSTCONVICTION counsel in
26 capital cases THAN ARE PROVIDED BY THIS SUBSECTION. The supreme court may
27 refuse to certify an attorney on the list who meets the qualifications
28 established under THIS subsection ~~B of this section~~ or may remove an attorney
29 from the list who meets the qualifications established under THIS subsection
30 ~~B of this section~~ if the supreme court determines that the attorney is
31 incapable or unable to adequately represent a capital defendant. The court
32 shall appoint counsel ~~pursuant to subsection B of this section~~ from the list.
33 COUNSEL WHO ARE APPOINTED FROM THE LIST SHALL MEET THE FOLLOWING
34 QUALIFICATIONS:

35 1. BE A MEMBER IN GOOD STANDING OF THE STATE BAR OF ARIZONA FOR AT
36 LEAST FIVE YEARS IMMEDIATELY PRECEDING THE APPOINTMENT.

37 2. HAVE PRACTICED IN THE AREA OF STATE CRIMINAL APPEALS OR
38 POSTCONVICTION PROCEEDINGS FOR AT LEAST THREE YEARS IMMEDIATELY PRECEDING THE
39 APPOINTMENT.

40 3. NOT PREVIOUSLY HAVE REPRESENTED THE CAPITAL DEFENDANT IN THE CASE
41 EITHER IN THE TRIAL COURT OR IN THE DIRECT APPEAL, UNLESS THE DEFENDANT AND
42 COUNSEL EXPRESSLY REQUEST CONTINUED REPRESENTATION AND WAIVE ALL POTENTIAL
43 ISSUES THAT ARE FORECLOSED BY CONTINUED REPRESENTATION.

1 ~~D. Notwithstanding subsection C of this section, the court may appoint~~
2 ~~counsel pursuant to subsection B of this section from outside the list of~~
3 ~~qualified candidates if either:~~

4 ~~1. No counsel meets the qualifications under subsections B and C of~~
5 ~~this section.~~

6 ~~2. No qualified counsel is available to serve.~~

7 ~~E.~~ D. Before filing a petition, the capital defendant may personally
8 appear before the trial court and waive counsel. If the trial court finds
9 that the waiver is knowing and voluntary, appointed counsel may withdraw.
10 The time limits in which to file a petition shall not be extended due solely
11 to the change from appointed counsel to self-representation.

12 ~~F.~~ E. If at any time the trial court determines that the capital
13 defendant is not indigent, appointed counsel shall no longer be compensated
14 by public monies and may withdraw.

15 ~~G.~~ F. Unless counsel is employed by a publicly funded office, counsel
16 appointed to represent a capital defendant in state ~~post-conviction~~
17 POSTCONVICTION relief proceedings shall be paid an hourly rate of not to
18 exceed one hundred dollars per hour for up to two hundred hours of work,
19 whether or not a petition is filed. Monies shall not be paid to court
20 appointed counsel unless either:

21 1. A petition is timely filed.

22 2. If a petition is not filed, a notice is timely filed stating that
23 counsel has reviewed the record and found no meritorious claim.

24 ~~H.~~ G. On a showing of good cause, the trial court shall compensate
25 appointed counsel from county funds in addition to the amount of compensation
26 prescribed by subsection ~~G~~ F of this section by paying an hourly rate in an
27 amount that does not exceed one hundred dollars per hour. The attorney may
28 establish good cause for additional fees by demonstrating that the attorney
29 spent over two hundred hours representing the defendant in the
30 proceedings. The court shall review and approve additional reasonable fees
31 and costs. If the attorney believes that the court has set an unreasonably
32 low hourly rate or if the court finds that the hours the attorney spent over
33 the two hundred hour threshold are unreasonable, the attorney may file a
34 special action with the Arizona supreme court. If counsel is appointed in
35 successive ~~post-conviction~~ POSTCONVICTION relief proceedings, compensation
36 shall be paid pursuant to section 13-4013, subsection A.

37 ~~I.~~ H. The county shall request reimbursement for fees it incurs
38 pursuant to subsections F, G, ~~H~~ and ~~J~~ I of this section arising out of the
39 appointment of counsel to represent an indigent capital defendant in a state
40 ~~post-conviction~~ POSTCONVICTION relief proceeding. The state shall pay fifty
41 per cent of the fees incurred by the county out of monies appropriated to the
42 supreme court for these purposes. The supreme court shall approve county
43 requests for reimbursement after certification that the amount requested is
44 owed.

1 ~~3.~~ I. The trial court may authorize additional monies to pay for
2 investigative and expert services that are reasonably necessary to adequately
3 litigate those claims that are not precluded by section 13-4232.

4 Sec. 5. Section 13-4234, Arizona Revised Statutes, is amended to read:

5 13-4234. Commencement of proceedings; notice; appointment of
6 counsel for capital defendants; assignment of judge;
7 stay

8 A. A proceeding is commenced by timely filing a notice of
9 ~~post-conviction~~ POSTCONVICTION relief with the clerk of the court in which
10 the conviction occurred. The clerk of the trial court shall provide notice
11 forms for commencement of first and successive ~~post-conviction~~ POSTCONVICTION
12 relief proceedings. The notice shall bear the caption of the original
13 criminal action to which it pertains. The notice in successive
14 ~~post-conviction~~ POSTCONVICTION relief proceedings shall comply with section
15 13-4232, subsection B. On receipt of the notice, the clerk of the trial
16 court shall file a copy of the notice in the case file of each original
17 action and promptly send copies to the defendant, the defendant's attorney,
18 if known, the county attorney and the attorney general, noting the date and
19 manner of sending the copies in the record. The state shall notify the
20 victim on request.

21 B. If an appeal of the defendant's conviction or sentence, or both, is
22 pending, the clerk, within five days after the filing of the notice for
23 ~~post-conviction~~ POSTCONVICTION relief, shall send a copy of the notice to the
24 appropriate appellate court, noting the date and manner of sending the copy
25 in the record.

26 C. In noncapital cases, the notice shall be filed within ninety days
27 after the judgment and sentence are entered or within thirty days after the
28 order and mandate affirming the judgment and sentence is issued on direct
29 appeal, whichever is later. A defendant has sixty days from the filing of
30 the notice in which to file a petition. On the filing of a successive
31 notice, a defendant has thirty days from the filing of the notice in which to
32 file a petition.

33 D. In capital cases, on the issuance of a mandate affirming the
34 defendant's conviction and sentence on direct appeal, the clerk of the
35 supreme court expeditiously shall file a notice of ~~post-conviction~~
36 POSTCONVICTION relief with the trial court. On the first notice in capital
37 cases, a defendant has sixty days from the filing of the notice in which to
38 file a petition. The supreme court shall appoint counsel pursuant to section
39 13-4041, subsection B. All indigent state prisoners under a capital sentence
40 are entitled to the appointment of counsel to represent them in state
41 ~~post-conviction~~ POSTCONVICTION proceedings. A competent indigent defendant
42 may reject the offer of counsel with an understanding of its legal
43 consequence. On successive notice in capital cases, the trial court shall
44 appoint the previous ~~post-conviction~~ POSTCONVICTION relief counsel of the
45 capital defendant unless counsel is waived pursuant to section 13-4041,

1 subsection E— D or good cause exists to appoint another qualified attorney
2 pursuant to section 13-4041, subsection B. On the filing of a successive
3 notice, a capital defendant or an appointed attorney has thirty days from the
4 filing of the notice in which to file a petition.

5 E. A defendant who has pled guilty and who is precluded from filing a
6 direct appeal pursuant to section 13-4033 may be granted an additional thirty
7 day extension of time in which to file the petition if the defendant's
8 counsel refuses to raise issues and leaves the defendant insufficient time to
9 file a petition within the time limits.

10 F. On a specific and detailed showing of good cause, a defendant in a
11 noncapital case may be granted up to a sixty day extension of time in which
12 to file the petition. On a specific and detailed showing of good cause, a
13 defendant in a capital case may be granted one thirty day extension of time
14 in which to file the petition.

15 G. The time limits are jurisdictional, and an untimely filed notice or
16 petition shall be dismissed with prejudice.

17 H. If the record of the trial proceeding has not been transcribed, the
18 defendant may request on a form provided by the clerk of the superior court
19 that the record be prepared. The court shall order that those portions of
20 the record be prepared that it deems necessary to resolve the issues to be
21 raised in the petition. The preparation of the record is a county expense if
22 the defendant is indigent. The time for filing the petition is tolled from
23 the time a request for the record is made until the record is prepared or the
24 request is denied.

25 I. The proceeding shall be assigned to the sentencing judge if it is
26 possible. If it appears that the sentencing judge's testimony is relevant,
27 the sentencing judge shall transfer the case to another judge.

28 J. If the defendant has received a sentence of death and the supreme
29 court has fixed the time for execution of the sentence, a stay of execution
30 shall not be granted on the filing of a second or subsequent petition except
31 on separate application for a stay to the supreme court setting forth with
32 particularity those issues raised which are not precluded under section
33 13-4232. The warrant shall not be stayed to allow for the filing of a
34 petition.

35 Sec. 6. Title 41, chapter 27, article 2, Arizona Revised Statutes, is
36 amended by adding section 41-3011.11, to read:

37 41-3011.11. State capital postconviction public defender
38 office; termination July 1, 2011

39 A. THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE TERMINATES
40 ON JULY 1, 2011.

41 B. TITLE 41, CHAPTER 41 IS REPEALED ON JANUARY 1, 2012.

1 Sec. 7. Title 41, Arizona Revised Statutes, is amended by adding
2 chapter 41, to read:

3 CHAPTER 41

4 STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE

5 ARTICLE 1. GENERAL PROVISIONS

6 41-4251. State capital postconviction public defender; office;
7 appointment; qualifications; duties

8 A. THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE IS
9 ESTABLISHED.

10 B. THE STATE IS RESPONSIBLE FOR FUNDING THE STATE CAPITAL
11 POSTCONVICTION PUBLIC DEFENDER OFFICE, INCLUDING START-UP COSTS.

12 C. THE GOVERNOR SHALL APPOINT THE STATE CAPITAL POSTCONVICTION PUBLIC
13 DEFENDER AND FILL ANY VACANCY IN THE OFFICE ON THE BASIS OF MERIT ALONE
14 WITHOUT REGARD TO POLITICAL AFFILIATION FROM THE LIST OF NAMES THAT ARE
15 SUBMITTED PURSUANT TO SECTIONS 41-4252 AND 38-211. THE STATE CAPITAL
16 POSTCONVICTION PUBLIC DEFENDER SERVES A FOUR YEAR TERM AND SERVES UNTIL THE
17 APPOINTMENT AND QUALIFICATION OF A SUCCESSOR IN OFFICE. AFTER APPOINTMENT,
18 THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER IS SUBJECT TO REMOVAL FROM
19 OFFICE ONLY FOR GOOD CAUSE AS DETERMINED BY A MAJORITY VOTE OF THE
20 NOMINATION, RETENTION AND STANDARDS COMMISSION ON INDIGENT DEFENSE. A
21 VACANCY SHALL BE FILLED FOR THE BALANCE OF THE UNEXPIRED TERM.

22 D. THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER SHALL MEET ALL OF
23 THE FOLLOWING CRITERIA:

24 1. BE A MEMBER IN GOOD STANDING OF THE STATE BAR OF ARIZONA OR BECOME
25 A MEMBER OF THE STATE BAR OF ARIZONA WITHIN ONE YEAR AFTER APPOINTMENT.

26 2. HAVE BEEN A MEMBER OF THE STATE BAR OF ARIZONA OR ADMITTED TO
27 PRACTICE IN ANY OTHER STATE FOR THE FIVE YEARS IMMEDIATELY PRECEDING THE
28 APPOINTMENT.

29 3. HAVE HAD SUBSTANTIAL EXPERIENCE IN THE REPRESENTATION OF ACCUSED OR
30 CONVICTED PERSONS IN CRIMINAL OR JUVENILE PROCEEDINGS.

31 4. MEET OR EXCEED THE STANDARDS FOR APPOINTMENT OF COUNSEL IN CAPITAL
32 CASES UNDER RULE 6.8, ARIZONA RULES OF CRIMINAL PROCEDURE, AS DETERMINED BY
33 THE NOMINATION, RETENTION AND STANDARDS COMMISSION ON INDIGENT DEFENSE.

34 E. THE SALARY OF THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER
35 SHALL EQUAL THE ANNUAL SALARY OF THE CHIEF COUNSEL OF THE CAPITAL LITIGATION
36 SECTION IN THE OFFICE OF THE ATTORNEY GENERAL.

37 F. THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER SHALL:

38 1. REPRESENT ANY PERSON WHO IS NOT FINANCIALLY ABLE TO EMPLOY COUNSEL
39 IN POSTCONVICTION RELIEF PROCEEDINGS IN STATE COURT AFTER A JUDGMENT OF DEATH
40 HAS BEEN RENDERED. NOTWITHSTANDING SECTION 11-584, SUBSECTION A, PARAGRAPH
41 1, SUBDIVISION (g), AFTER A JUDGMENT OF DEATH HAS BEEN RENDERED, A COUNTY
42 EMPLOYED INDIGENT DEFENSE COUNSEL SHALL NOT HANDLE POSTCONVICTION RELIEF
43 PROCEEDINGS IN STATE COURT UNLESS A CONFLICT EXISTS WITH THE STATE CAPITAL
44 POSTCONVICTION PUBLIC DEFENDER AND A COUNTY EMPLOYED INDIGENT DEFENSE COUNSEL
45 IS APPOINTED.

1 2. SUPERVISE THE OPERATION, ACTIVITIES, POLICIES AND PROCEDURES OF THE
2 STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE.

3 3. BEGINNING IN FISCAL YEAR 2007-2008, SUBMIT AN ANNUAL BUDGET FOR THE
4 OPERATION OF THE OFFICE TO THE LEGISLATURE.

5 4. NOT ENGAGE IN THE PRIVATE PRACTICE OF LAW OR PROVIDE OUTSIDE
6 COUNSEL TO ANY OTHER ATTORNEY OUTSIDE OF THE STATE CAPITAL POSTCONVICTION
7 PUBLIC DEFENDER OFFICE.

8 5. NOT SPONSOR OR FUND TRAINING FOR ANY OTHER ATTORNEY OUTSIDE OF THE
9 STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE.

10 6. NOT PROVIDE TRIAL OR DIRECT APPEAL ASSISTANCE TO ATTORNEYS OUTSIDE
11 OF THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE.

12 7. NOT LOBBY, DURING WORKING HOURS, THE STATE LEGISLATURE OR THE
13 CONGRESS OF THE UNITED STATES, EXCEPT AS PROVIDED BY PARAGRAPH 3 OF THIS
14 SUBSECTION.

15 8. ALLOCATE PERSONNEL AND RESOURCES TO POSTCONVICTION RELIEF
16 PROCEEDINGS SO LONG AS THERE ARE NO CONFLICTS OF INTEREST IN REPRESENTATION
17 AND ALL STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER ATTORNEYS ARE APPOINTED
18 TO POSTCONVICTION RELIEF CASES THAT ARE ELIGIBLE FOR APPOINTMENT OF COUNSEL
19 UNDER SECTION 13-4041.

20 G. THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER MAY:

21 1. ACCEPT AND SPEND PUBLIC AND PRIVATE GIFTS AND GRANTS FOR USE IN
22 IMPROVING AND ENHANCING THE ABILITY TO PERFORM THE RESPONSIBILITIES OF THE
23 STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE PURSUANT TO THIS CHAPTER.

24 2. EMPLOY NOT MORE THAN THREE DEPUTIES AND NOT MORE THAN FOUR OTHER
25 EMPLOYEES AND ESTABLISH AND OPERATE ANY OFFICES AS NEEDED FOR THE PROPER
26 PERFORMANCE OF THE DUTIES OF THE OFFICE.

27 H. FOR EACH PERSON REPRESENTED, THE STATE CAPITAL POSTCONVICTION
28 PUBLIC DEFENDER OFFICE SHALL REQUEST REIMBURSEMENT FROM THE COUNTY IN WHICH
29 THE PERSON WAS CONVICTED FOR FEES IT INCURS PURSUANT TO THIS SECTION ARISING
30 OUT OF ITS REPRESENTATION OF THAT PERSON. THE COUNTY SHALL PAY FIFTY PER
31 CENT OF THE FEES INCURRED BY THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER
32 OFFICE NOT TO EXCEED THIRTY THOUSAND DOLLARS PER CASE.

33 41-4252. Nomination, retention and standards commission on
34 indigent defense; membership

35 A. THE NOMINATION, RETENTION AND STANDARDS COMMISSION ON INDIGENT
36 DEFENSE IS ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS:

37 1. TWO COUNTY PUBLIC DEFENDERS WHO ARE APPOINTED BY THE GOVERNOR, ONE
38 OF WHOM IS FROM A COUNTY WITH A POPULATION OF FIVE HUNDRED THOUSAND OR MORE
39 PERSONS AND ONE OF WHOM IS FROM A COUNTY WITH A POPULATION OF LESS THAN FIVE
40 HUNDRED THOUSAND PERSONS.

41 2. ONE CRIMINAL DEFENSE ATTORNEY WHO IS APPOINTED BY THE GOVERNOR.

42 3. ONE CRIMINAL DEFENSE ATTORNEY WHO IS APPOINTED BY THE PRESIDENT OF
43 THE SENATE.

1 4. ONE CRIMINAL DEFENSE ATTORNEY WHO IS APPOINTED BY THE SPEAKER OF
2 THE HOUSE OF REPRESENTATIVES.

3 5. ONE JUSTICE OF THE SUPREME COURT WHO IS APPOINTED BY THE CHIEF
4 JUSTICE OF THE SUPREME COURT.

5 6. ONE SUPERIOR COURT JUDGE WHO IS APPOINTED BY THE CHIEF JUSTICE OF
6 THE SUPREME COURT.

7 7. TWO PRIVATE CITIZENS WHO ARE APPOINTED BY THE GOVERNOR, NEITHER OF
8 WHOM IS A JUDGE, LAW ENFORCEMENT OFFICER, PROSECUTOR OR COURT APPOINTED
9 EMPLOYEE.

10 B. THE MEMBERS SHALL ANNUALLY ELECT A CHAIRPERSON FROM AMONG THE
11 MEMBERS AND A MEMBER SHALL NOT SERVE CONSECUTIVE TERMS AS CHAIRPERSON.

12 C. A COMMISSION MEMBER SERVES A THREE YEAR TERM AND SERVES UNTIL THE
13 MEMBER'S SUCCESSOR IS DULY APPOINTED AND QUALIFIED. AN APPOINTMENT TO FILL A
14 VACANCY RESULTING OTHER THAN FROM EXPIRATION OF A TERM IS FOR THE UNEXPIRED
15 PORTION OF THE TERM ONLY.

16 D. AT ALL TIMES DURING THEIR TERMS, COMMISSION MEMBERS SHALL MAINTAIN
17 THE OCCUPATIONAL STATUS UNDER WHICH THEY WERE APPOINTED OR SHALL BE REPLACED
18 BY A PERSON WHO IS OTHERWISE QUALIFIED.

19 E. ON THE ORIGINAL NOMINATION FOR, OR WITHIN THIRTY DAYS AFTER THE
20 OCCURRENCE OF A VACANCY IN, THE OFFICE OF THE STATE CAPITAL POSTCONVICTION
21 PUBLIC DEFENDER, THE COMMISSION SHALL SUBMIT TO THE GOVERNOR THE NAMES OF AT
22 LEAST THREE PERSONS WHO ARE NOMINATED TO FILL THE VACANCY, NOT MORE THAN
23 TWO-THIRDS OF WHOM ARE MEMBERS OF THE SAME POLITICAL PARTY.

24 Sec. 8. Initial appointment of state capital postconviction
25 public defender

26 The initial state capital postconviction public defender shall be
27 appointed for a term beginning on February 1, 2007 and ending on January 31,
28 2011. Thereafter, all appointments shall be made pursuant to statute.

29 Sec. 9. Initial terms of members of the nomination, retention
30 and standards commission on indigent defense

31 A. Notwithstanding section 41-4252, Arizona Revised Statutes, as added
32 by this act, the initial terms of members of the nomination, retention and
33 standards commission are:

34 1. Three terms ending January 1, 2008.

35 2. Four terms ending January 1, 2009.

36 B. The appropriate official shall make all subsequent appointments as
37 prescribed by statute.

38 Sec. 10. Appropriation; purposes; exemption

39 A. The sum of \$220,000 is appropriated from the state general fund in
40 fiscal year 2006-2007 to the state capital postconviction public defender
41 office for the purposes prescribed by section 41-4251, Arizona Revised
42 Statutes, as added by this act.

43 B. The appropriation made in subsection A of this section is exempt
44 from the provisions of section 35-190, Arizona Revised Statutes, relating to
45 lapsing of appropriations through June 30, 2008.

1 Sec. 11. Effective date
2 Sections 13-4041 and 13-4234, Arizona Revised Statutes, as amended by
3 this act, are effective from and after December 31, 2006.
4 Sec. 12. Laws 2000, chapter 193, section 598, as amended by Laws 2001,
5 chapter 8, section 2, Laws 2002, chapter 291, section 17 and Laws 2004,
6 chapter 69, section 5, is amended to read:
7 Sec. 598. Effective date
8 A. Section 12-116, Arizona Revised Statutes, as amended by Laws 1999,
9 chapter 175, section 6, Laws 2000, chapter 193, section 94, LAWS 2004,
10 CHAPTER 69, SECTION 3 and this act is effective from and after December 31,
11 2009.
12 B. Section 42-1201, Arizona Revised Statutes, as amended by Laws 1999,
13 chapter 250, section 7 and this act is effective from and after December 31,
14 2000.
15 C. Section 49-203, Arizona Revised Statutes, as amended by Laws 1999,
16 chapter 26, section 5 and this act is effective from and after December 31,
17 2000.
18 D. Section 49-361, Arizona Revised Statutes, as amended by Laws 1999,
19 chapter 26, section 17 and this act is effective from and after December 31,
20 2000.
21 Sec. 13. Laws 2000, chapter 193, section 599, as amended by Laws 2001,
22 chapter 8, section 3, Laws 2002, chapter 291, section 18 and Laws 2004,
23 chapter 69, section 6, is amended to read:
24 Sec. 599. Delayed repeal
25 A. Section 12-116, Arizona Revised Statutes, as amended by Laws 1997,
26 chapter 79, section 7, Laws 2000, chapter 193, section 93, LAWS 2004, CHAPTER
27 69, SECTION 2 and this act is repealed from and after December 31, 2009.
28 B. Section 42-1201, Arizona Revised Statutes, as amended by Laws 1998,
29 chapter 1, section 144 and this act is repealed from and after December 31,
30 2000.
31 C. Section 49-203, Arizona Revised Statutes, as amended by Laws 1996,
32 chapter 194, section 5, chapter 351, section 39 and this act is repealed from
33 and after December 31, 2000.
34 Sec. 14. Purpose
35 Pursuant to section 41-2955, subsection B, Arizona Revised Statutes,
36 the purpose of the state capital postconviction public defender office is to
37 provide representation to any person who is not financially able to employ
38 counsel in postconviction relief proceedings in state court after a judgment
39 of death has been rendered.

~~APPROVED BY THE GOVERNOR JUNE 21, 2006.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 21, 2006.~~